

(d) Notwithstanding the provisions of paragraph (c) of this section, a person specified therein shall not be deemed to be an underwriter nor to be engaged in a distribution with respect to securities acquired in any transaction specified in paragraph (a) of this section, which are sold by him in brokers' transactions within the meaning of section 4(4) of the Act, in accordance with the conditions and subject to the limitations specified in paragraph (e) of this section, if such person:

(1) Does not directly or indirectly solicit or arrange for the solicitation of orders to buy in anticipation of or in connection with such brokers' transactions;

(2) Makes no payment in connection with the execution of such brokers' transactions to any person other than the broker; and

(3) Limits such brokers' transactions to a sale or series of sales which, together with all other sales of securities of the same class by such person or on his behalf within the preceding six months, will not exceed the following:

(i) If the security is traded only otherwise than on a securities exchange, approximately one percent of the shares or units of such security outstanding at the time of receipt by the broker of the order to execute such transactions, or

(ii) If the security is admitted to trading on a securities exchange, the lesser of approximately (a) one percent of the shares or units of such security outstanding at the time of receipt by the broker of the order to execute such transactions or (b) the largest aggregate reported volume of trading on securities exchanges during any one week within the four calendar weeks preceding the receipt of such order.

(e) For the purposes of paragraph (d) of this section:

(1) The term *brokers' transactions* in section 4(4) of the Act shall be deemed to include transactions by a broker acting as agent for the account of the seller where:

(i) The broker performs no more than the usual and customary broker's functions,

(ii) The broker does no more than execute an order or orders to sell as a broker and receives no more than the

usual or customary broker's commissions,

(iii) The broker does not solicit or arrange for the solicitation of orders to buy in anticipation of or in connection with such transactions and

(iv) The broker is not aware of any circumstances indicating that his principal is failing to comply with the provisions of paragraph (d) of this section;

(2) The term *solicitation of such orders* in section 4(4) of the Act shall be deemed to include the solicitation of an order to buy a security, but shall not be deemed to include the solicitation of an order to sell a security;

(3) Where within the previous 60 days a dealer has made a written bid for a security or a written solicitation of an offer to sell such security, the term *solicitation* in section 4(4) shall not be deemed to include an inquiry regarding the dealer's bid or solicitation.

(f) For the purposes of this rule, the term *constituent corporation* means any corporation, other than the issuer, which is a party to any transaction specified in paragraph (a) of this section. The term *affiliate* means a person controlling, controlled by or under common control with a specified person.

NOTE: This section is rescinded effective on and after January 1, 1973, except that it shall remain in effect: (1) For transactions submitted before that date for vote or consent of security holders; (2) for transactions formally submitted before such date for approval to any governmental regulatory agency, if such approval is required by law; and (3) for resales of securities received by persons in such transactions.

(Sec. 5, 48 Stat. 77; 15 U.S.C. 77e)

[19 FR 7129, Nov. 3, 1954, as amended at 24 FR 5900, July 23, 1959; 30 FR 2022, Feb. 13, 1965; 33 FR 566, Jan. 17, 1968. Rescinded at 37 FR 23636, Nov. 7, 1972]

§ 230.134 Communications not deemed a prospectus.

The term *prospectus* as defined in section 2(10) of the Act shall not include a notice, circular, advertisement, letter, or other communication published or transmitted to any person after a registration statement has been filed if it contains only the statements required or permitted to be included therein by the following provisions of this section:

(a) Such communication may include any one or more of the following items of information, which need not follow the numerical sequence of this paragraph:

(1) The name of the issuer of the security;

(2) The full title of the security and the amount being offered;

(3) A brief indication of the general type of business of the issuer, limited to the following:

(i) In the case of a manufacturing company, the general type of manufacturing and the principal products or classes of products manufactured;

(ii) In the case of a public utility company, the general type of services rendered and a brief indication of the area served;

(iii) In the case of an investment company registered under the Investment Company Act of 1940, the company's classification and subclassification under the Act, whether it is a balanced, specialized, bond, preferred stock or common stock fund and whether in the selection of investments emphasis is placed upon income or growth characteristics, and a general description of an investment company including its general attributes, methods of operation and services offered provided that such description is not inconsistent with the operation of the particular investment company for which more specific information is being given, identification of the company's investment adviser, any logo, corporate symbol or trademark of the company or its investment adviser and any graphic design or device or an attention-getting headline, not involving performance figures, designed to direct the reader's attention to textual material included in the communication pursuant to other provisions of this rule; and, with respect to an investment company issuing redeemable securities:

(A) A description of such company's investment objectives and policies, services, and method of operation;

(B) Identification of the company's principal officers;

(C) The year of incorporation or organization or period of existence of the company, its investment adviser, or both;

(D) The company's aggregate net asset value as of the most recent practicable date;

(E) The aggregate net asset value as of the most recent practicable date of all registered investment companies under the management of the company's investment adviser;

(F) Any pictorial illustration which is appropriate for inclusion in the company's prospectus and not involving performance figures;

(G) Descriptive material relating to economic conditions, or to retirement plans or other goals to which an investment in the company could be directed, but not directly or indirectly relating to past performance or implying achievement of investment objectives; *Provided, That, (1) if any printed material permitted by paragraphs (a)(3)(iii) (A) through (G) of this section is included, such communication shall also contain the following legend set in a size type at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement; and*

(H) Written notice of the terms of an offer made solely to all registered holders of the securities, or of a particular class or series of securities, issued by the company proportionate to their holdings, offering to sell additional shares to such holders of securities at prices reflecting a reduction in, or elimination of, the regular sales load charged: *Provided, That, (1) if any printed material permitted by paragraphs (a)(3)(iii) (A) through (H) of this section is included, such communication shall also contain the following legend set in a size type at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisements:*

For more complete information about (Name of Company) including charges and expenses (get) (obtain) (send for) a prospectus (from (Name and Address)) (by sending this coupon). Read it carefully before you invest or (pay) (forward funds) (send money).

Or, (2) if any material permitted by paragraphs (a)(3)(iii) (A) through (G) of this section is used in a radio or television advertisement, such communication shall also contain the following legend given emphasis equal to

that used in the major portion of the advertisement:

For more complete information about (Name of Company) including charges and expenses (get) (obtain) (send for) a prospectus (from (Name and Address)). Read it carefully before you invest or (pay) (forward funds) (send money).

For purposes of paragraph (a)(3)(iii)(B) of this section, *principal officers* means the president in charge of a principal business function and any other person who performs similar policy making functions for the company on a regular basis. In the case of two or more registered investment companies having the same investment adviser or principal underwriter, the same information described in this paragraph (a)(3)(iii) may be included as to each such company in a joint communication on the same basis as it is permitted in communications dealing with individual companies under this paragraph (a)(3)(iii).

(iv) In the case of any other type of company, a corresponding statement;

(4) The price of the security, or if the price is not known, the method of its determination or the probable price range as specified by the issuer or the managing underwriter;

(5) In the case of a debt security with a fixed (non-contingent) interest provision, the yield or, if the yield is not known, the probable yield range, as specified by the issuer or the managing underwriter;

(6) The name and address of the sender of the communication and the fact that he is participating, or expects to participate, in the distribution of the security;

(7) The names of the managing underwriters;

(8) The approximate date upon which it is anticipated the proposed sale to the public will commence;

(9) Whether, in the opinion of counsel, the security is a legal investment for savings banks, fiduciaries, insurance companies, or similar investors under the laws of any State or Territory or the District of Columbia;

(10) Whether, in the opinion of counsel, the security is exempt from specified taxes, or the extent to which the issuer has agreed to pay any tax with

respect to the security or measured by the income therefrom;

(11) Whether the security is being offered through rights issued to security holders, and, if so, the class of securities the holders of which will be entitled to subscribe, the subscription ratio, the actual or proposed record date, the date upon which the rights were issued or are expected to be issued, the actual or anticipated date upon which they will expire, and the approximate subscription price, or any of the foregoing;

(12) Any statement or legend required by any state law or administrative authority; and

(13) A communication concerning the securities of a registered investment company may also include any one or more of the following items of information: Offers, descriptions, and explanations of any products and services not constituting securities subject to registration under the Securities Act of 1933, and descriptions of corporations provided that such offers, descriptions and explanations do not relate directly to the desirability of owning or purchasing a security issued by a registered investment company and that all direct references in such communications to a security issued by a registered investment company contain only the statements required or permitted to be included therein by the other provisions of this rule, and that all such direct references be placed in a separate and enclosed area in the communication.

(14)(i) With respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock, the security rating or ratings assigned to the class of securities by any nationally recognized statistical rating organization and the name or names of the nationally recognized statistical rating organization(s) which assigned such rating(s), and with respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock registered on Form F-9 (§ 239.39 of this chapter), the security rating or ratings assigned to the class of securities by any other rating organization specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F-9 and

the name or names of the rating organization or organizations which assigned such rating(s).

(ii) For the purpose of paragraph (a)(14)(i) of this section, the term *nationally recognized statistical rating organization* shall have the same meaning as used in Rule 15c-3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1(c)(2)(vi)(F)).

(b) Except as provided in paragraph (c) of this section, every communication used pursuant to this section shall contain the following:

(1) If the registration statement has not yet become effective, the following statement:

A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This (communication) shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any State in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such State.

(2) A statement whether the security is being offered in connection with a distribution by the issuer or by a security holder, or both, and whether the issue represents new financing or re-funding or both; and

(3) The name and address of a person or persons from whom a written prospectus meeting the requirements of section 10 of the Act may be obtained.

(c) Any of the statements or information specified in paragraph (b) of this section may, but need not, be contained in a communication: (i) Which does no more than state from whom a

written prospectus meeting the requirements of section 10 of the Act may be obtained, identify the security, state the price thereof and state by whom orders will be executed; or (ii) which is accompanied or preceded by a prospectus or a summary prospectus which meets the requirements of section 10 of the act at the date of such preliminary communication.

(d) A communication sent or delivered to any person pursuant to this rule which is accompanied or preceded by a prospectus which meets the requirements of section 10 of the Act at the date of such communication, may solicit from the recipient of the communication an offer to buy the security or request the recipient to indicate, upon an enclosed or attached coupon or card, or in some other manner, whether he might be interested in the security, if the communication contains substantially the following statement:

No offer to buy the securities can be accepted and no part of the purchase price can be received until the registration statement has become effective, and any such offer may be withdrawn or revoked, without obligation or commitment of any kind, at any time prior to notice of its acceptance given after the effective date. An indication of interest in response to this advertisement will involve no obligation or commitment of any kind.

Provided, That such statement need not be included in such a communication to a dealer if the communication refers to a prior communication to the dealer, with respect to the same security, in which the statement was included.

(e) In the case of an investment company registered under the Investment Company Act of 1940 that holds itself out as a "money market fund," a communication used under this section

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shall contain the disclosure required by § 230.482(a)(7).

(Sec. 2, 48 Stat. 74, as amended; 15 U.S.C. 77b; secs. 2(10), 10(b), 10(c), 10(d), 10(f), and 19(a) of the 1933 Act (15 U.S.C. 77b(10), 77j(b), 77j(c), 77j(d), 77j(f) and 77s(a)); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 79t(a), 77sss(a), 80a–37; secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85, secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 81 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a))

[20 FR 6524, Sept. 3, 1955, as amended at 23 FR 184, Jan. 10, 1958; 37 FR 10073, May 19, 1972; 39 FR 39869, Nov. 12, 1974; 40 FR 27443, June 30, 1975; 43 FR 47495, Oct. 16, 1978; 44 FR 52818, Sept. 10, 1979; 47 FR 11433, Mar. 16, 1982; 48 FR 19875, May 3, 1983; 58 FR 62029, Nov. 23, 1993; 61 FR 13975, Mar. 28, 1996]

§ 230.134a Options material not deemed a prospectus.

Written materials, including advertisements, relating to standardized options, as that term is defined in Rule 9b-1 under the Securities Exchange Act of 1934, shall not be deemed to be a prospectus for the purposes of section 2(10) of the Securities Act of 1933; *Provided*, That such materials are limited to explanatory information describing the general nature of the standardized options markets or one or more strategies; *And, Provided further*, That:

(a) The potential risks related to options trading generally and to each strategy addressed are explained;

(b) No past or projected performance figures, including annualized rates of return are used;

(c) No recommendation to purchase or sell any option contract is made;

(d) No specific security is identified, other than

(1) An option or other security exempt from registration under the Act, or

(2) An index option, including the component securities of the index; and

(e) If there is a definitive options disclosure document, as defined in Rule 9b-1 under the Securities Exchange Act of 1934, the materials shall contain the name and address of a person or persons from whom a copy of such document may be obtained.

(15 U.S.C. 77a *et seq.*; secs. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 210, 48 Stat. 905, 906, 908; secs. 1–4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57)

[47 FR 41955, Sept. 23, 1982, as amended at 49 FR 12688, Mar. 30, 1984]

§ 230.134b Statements of additional information.

For the purpose only of Section 5(b) of the Act (15 U.S.C. 77e(b)), the term “prospectus” as defined in Section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) does not include a Statement of Additional Information filed as part of a registration statement on Form N-1A (§ 239.15A and § 274.11A of this chapter), Form N-2 (§ 239.14 and § 274.11a-1 of this chapter), Form N-3 (§ 239.17a and § 274.11b of this chapter), Form N-4 (§ 239.17b and § 274.11c of this chapter), or Form N-6 (§ 239.17c and § 274.11d of this chapter) transmitted prior to the effective date of the registration statement if it is accompanied or preceded by a preliminary prospectus meeting the requirements of § 230.430.

[67 FR 19868, Apr. 23, 2002]

§ 230.135 Notice of proposed registered offerings.

(a) *When notice is not an offer.* For purposes of section 5 of the Act (15 U.S.C. 77e) only, an issuer or a selling security holder (and any person acting on behalf of either of them) that publishes through any medium a notice of a proposed offering to be registered under the Act will not be deemed to offer its securities for sale through that notice if: